

MAY 5 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	DOCKET FILE COPY ORIGINAL
)	
Implementation of the)	CC Docket No. 96-152
Telecommunications Act of 1996:)	
)	
Telemessaging,)	
Electronic Publishing, and)	
Alarm Monitoring Services)	

**SOUTHWESTERN BELL TELEPHONE COMPANY'S PETITION FOR
RECONSIDERATION OR CLARIFICATION OF SECOND REPORT AND ORDER**

Southwestern Bell Telephone Company ("SWBT"), pursuant to Commission Rule 1.429,¹ petitions the Commission to reconsider or clarify in one limited respect its Second Report and Order in the Alarm Monitoring Proceeding.²

I. SUMMARY

In considering the "variety of factors" bearing upon whether a BOC's sales agency or other marketing arrangement with an alarm monitoring service provider may be the "provision" of alarm monitoring service, the Commission need not, and should not, take into account whether the terms and conditions of the arrangement would be made available to other alarm monitoring providers on a nondiscriminatory basis.³ Congress did not require that a BOC enter

¹47 C.F.R. Section 1.429.

²Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services, CC Docket No. 96-152 ("Alarm Monitoring Proceeding"), Second Report and Order, released March 25, 1997 ("Second Report and Order").

³Second Report and Order, para. 38.

087
JUL 1 1997

into alarm monitoring sales agency/marketing arrangements with others, nor has the Commission previously required a BOC to provide non-bottleneck resources -- such as the sales agency marketing services involved here -- to unaffiliated entities. Indeed, thousands of alarm monitoring providers today sell their services to the public through a multitude of sales channels and advertising media.

At the very least, the Commission should clarify that nondiscrimination is not an absolute requirement for an acceptable sales agency relationship. Rather, the Commission should expressly affirm that nondiscrimination is but one of a number of factors the Commission will consider in reviewing sales agency proposals, and that this factor is not outcome-determinative where other factors show that the BOC's interests would not be unduly "intertwined" with those of an alarm monitoring service provider.

II. DISCUSSION

In its Second Report and Order, the Commission held that Section 275 of the Act does not, by its terms, prohibit a BOC from acting as a sales agent or marketing alarm monitoring services. It rejected the argument that BOCs should be prohibited from entering into sales agency or various marketing arrangements on behalf of alarm monitoring service providers. Instead, the Commission stated that it would examine a "variety of factors" to ensure that, in any given case, the BOC's interests would not be so "intertwined" with those of the alarm monitoring service provider that the BOC might be regarded as providing the service. One such

factor was “whether the terms and conditions of the sales agency and marketing arrangement are made available to other alarm monitoring companies on a nondiscriminatory basis.”⁴

The Commission should eliminate this factor as a criterion for judging specific sales agency/marketing arrangements.⁵ First, nothing indicates that Congress intended Section 275(a) to require that permissible sales agency/marketing arrangements be made available to others on a nondiscriminatory basis. The applicable statute is silent on this issue and the Commission expressly contrasted Section 275 with Section 274 (the Electronic Publishing statute); only the latter speaks to making certain marketing arrangements available to others.⁶

Second, Section 275(b)(1) non-discrimination obligations are limited to the provision of “network services.” Clearly, marketing-related services are not “network services.” Even if they were, the Section 275(b)(1) obligation is surely no greater than (and in fact is narrower than) the nondiscrimination obligation involving “telecommunications services” applicable to telemessaging services, pursuant to Section 260(a)(2). Yet, the Commission has just held

⁴Id., paras. 37-38.

⁵See, SWBT’s Comparably Efficient Interconnection Plan for Security Service, CC Docket Nos. 85-229, 90-623 and 95-20, filed April 4, 1996. SWBT will comply with its commitment to nondiscrimination once it enters into a sales agency relationship with an alarm monitoring service provider, as stated in its ex parte letter filed in that matter on April 3, 1997, and even if the Commission reconsiders or clarifies the Second Report and Order as SWBT requests, SWBT will not modify its sales agency relationship until the Bureau approves an amendment to its CEI Plan.

⁶Second Report and Order, para. 37 & n. 84 (contrasting the absence of marketing prohibition provisions in Section 275 with the presence of such provisions in Section 274). Similarly, Section 274(c)(2) requires that certain marketing activities be extended to defined others, yet no similar language appears anywhere within Section 275.

elsewhere that Section 260(a)(2) does not require a local exchange carrier to market others' voice messaging services.⁷

Third, the Commission's Computer III rules have never required that a BOC's marketing of any enhanced service be conditioned upon its commitment to market the enhanced services of others. To the contrary, the enhanced services nondiscrimination obligation is limited to "basic" telecommunications services that underlie or support the delivery of enhanced services.⁸

Marketing services, unlike basic telecommunications services, have never been regarded as a bottleneck arrangement to which nondiscrimination obligations attach. The FCC's treatment of the BOCs' sales agency programs is an analogous case in point.⁹ The FCC did not require that the BOCs' CPE-vendor sales agents sell all CPE vendors' products on a nondiscriminatory basis.

To prevent the possibility that a BOC would be excessively "intertwined" with an alarm company, comments in the Alarm Monitoring Proceeding suggested that a sales agency/marketing arrangement should ensure that the alarm monitoring service customer will maintain a direct customer-provider relationship with the unaffiliated alarm monitoring service provider, that the BOC will not perform any functions that would constitute "alarm monitoring

⁷Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services, CC Docket No. 96-152, First Report and Order, released February 7, 1996, paras. 224, 228. In so holding, the Commission thus rejected the proposed rule of one commentator to the effect that "[n]o LEC can market its telemessaging services unless it markets its competitors [sic] services at the same time and under the same terms and conditions." Comments of Voice-Tel, filed September 4, 1996, at p. 10.

⁸Amendment of Section 64.702 of the Commission's Rules and Regulations, 2 FCC Rcd 3035 (1987), para. 91.

⁹See, Sales Agency Order, 98 FCC 2d 943 (1984).

service,” and that the sales agency or other marketing arrangement will be non-exclusive.¹⁰ The Second Report and Order did not articulate why a regulatory commitment to make the sales agency/marketing arrangement available on a nondiscriminatory basis would be superior to these principles or how such a commitment was germane to the “provision” analysis.¹¹ To the extent that the Commission regards as pertinent any relationship between a BOC and providers other than the provider in the arrangement (or any relationship between such provider and other potential sales agents), it should consider the foregoing principles, particularly whether the arrangement will be mutually non-exclusive. Such non-exclusivity would ensure that both the BOC and the provider would remain free to do business with others (and thus, not “intertwined” with one another), should either wish to do so exercising independent business judgment.

If the Commission decides to retain nondiscrimination as a criterion to evaluate BOC/alarm provider sales agency relationships, however, it should clarify that it does not intend for nondiscrimination to be treated as a de facto requirement or for its absence to create a high hurdle for an applicant to overcome. A BOC should be free to demonstrate that based on other factors, such as those discussed above, it has a legitimate sales agency relationship with an alarm services provider without an undue “intertwining” of interests.

¹⁰Alarm Monitoring Proceeding, Comments of SBC Communications Inc., filed September 4, 1996, pp. 21-22, and Attachment B thereto; Reply Comments of SBC Communications Inc., filed September 20, 1996, pp. 19-20.

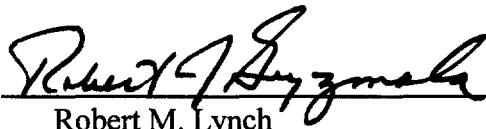
¹¹See, California v. Federal Communications Commission, 39 F.3d 919, 925 (9th Cir. 1994).

III. CONCLUSION

In the course of passing on sales agency/marketing arrangements that a BOC would enter into with an alarm monitoring provider, the Commission need not and should not regard as a pertinent factor whether the BOC commits to make the arrangement available to other alarm monitoring companies on a nondiscriminatory basis. In the alternative, the Commission should clarify that nondiscrimination is not an essential element of an acceptable sales agency arrangement.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By 
Robert M. Lynch
Patricia Diaz Dennis
Durward D. Dupre
Michael J. Zpevak
Robert J. Gryzmala

Attorneys for
Southwestern Bell Telephone Company

One Bell Center, Room 3520
St. Louis, Missouri 63101
(314) 235-2507

May 5, 1997

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "SOUTHWESTERN BELL TELEPHONE COMPANY's PETITION FOR RECONSIDERATION ON CLARIFICATION OF SECOND REPORT AND ORDER" in Docket No. 96-152 has been filed this 5th day of May, 1997 to the Parties of Record.

A handwritten signature in black ink, appearing to read "Katie M. Turner", written over a horizontal line.

Katie M. Turner

May 5, 1997

ITS INC
1919 M STREET NW
ROOM 246
WASHINGTON DC 20554

JANICE MYLES
FCC
COMMON CARRIER BUREAU
1919 M STREET NW RM 544
WASHINGTON DC 20554

DOROTHY CONWAY
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW - RM 234
WASHINGTON DC 20554

TIMOTHY FAIN
OMB DESK OFFICER
10236 NEOB
725 - 17TH ST NW
WASHINGTON DC 20503

KATHRYN MARIE KRAUS
U S WEST INC
1020 19TH ST NW STE 700
WASHINGTON DC 20036

PETER ARTH JR
EDWARD W O'NEILL
ATTORNEYS FOR THE PUBLIC UTILITIES
COMMISSION OF THE STATE OF CALIFORNIA
505 VAN NESS AVENUE
SAN FRANCISCO CA 94102

LAWRENCE W KATZ
BELL ATLANTIC TELEPHONE COMPANIES
1320 NORTH COURT HOUSE ROAD
8TH FLOOR
ARLINGTON VA 22201

JOHN F NATOLI
NYNEX CORPORATION
35 VILLAGE ROAD
MIDDLETON MA 01949

M ROBERT SUTHERLAND
A KIRVEN GILBERT III
1155 PEACHTREE ST NE
ATLANTA GA 30309-3610

MARK C ROSENBLUM
AVA B KLEINMAN
AT&T CORP
295 NORTH MAPLE AVENUE
BASKING RIDGE NJ 07920

MARY McDERMOTT
LINDA KENT
UNITED STATES TELEPHONE ASSOCIATION
1401 H STREET NW STE 600
WASHINGTON DC 20005

MARLIN D ARD
LUCILLE M MATES
PACIFIC TELESIS GROUP
140 NEW MONTGOMERY ST RM 1529
SAN FRANCISCO CA 94105

BRIAN CONBOY
SUE D BLUMENFELD
WILLKIE FARR & GALLAGHER
THREE LAFAYETTE CENTRE
1155 21ST STREET NW
WASHINGTON DC 20036

DANNY E ADAMS
STEVEN A AUGUSTINO
KELLYE DRYE & WARREN LLP
1200 19TH ST NW
WASHINGTON DC 20036

FRANK W KROGH
DONALD J ELARDO
MCI TELECOMMUNICATIONS CORPORATION
1801 PENNSYLVANIA AVE NW
WASHINGTON DC 20006

DAVID J BROWN
SENIOR VICE PRESIDENT/PUBLIC POLICY AND
GENERAL COUNSEL
NEWSPAPER ASSOCIATION OF AMERICA
529 14TH ST NW STE 440
WASHINGTON DC 20045-1402

MARY E BURGESS
ASSISTANT COUNSEL
STATE OF NEW YORK DEPARTMENT OF
PUBLIC SERVICE
THREE EMPIRE STATE PLAZA
ALBANY NY 12223-1350

FRANK MICHAEL PANEK
RICHARD HETKE
COUNSEL FOR AMERITECH
2000 WEST AMERITECH CENTER DR
ROOM 4H84
HOFFMAN ESTATES IL 60196-1025